

**Unga Painting Corporation; Unga Corporation<sup>1</sup> and International Brotherhood of Painters and Allied Trades, Local 1791, AFL-CIO and Henry Murata and James H. Miyamoto and Leroy Rosa and Inoke Palepale and John Badiali.** Cases 37-CA-1241, 37-CA-1243, 37-CA-1247, 37-CA-1252, 37-CA-1255, and 37-CA-1258

March 3, 1983

## SECOND SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN MILLER AND MEMBERS  
JENKINS AND ZIMMERMAN

On May 11, 1977, the National Labor Relations Board issued a Decision and Order in Cases 37-CA-1241, 37-CA-1243, 37-CA-1247, 37-CA-1252, 37-CA-1255, and 37-CA-1258<sup>2</sup> directing Unga Painting Corporation,<sup>3</sup> to make whole John Badiali, James Miyamoto, Henry Murata, Inoke Palepale, Leroy Rosa, and Frank Silva for their losses resulting from Respondent's unfair labor practices in violation of Section 8(a)(3) and (1) of the National Labor Relations Act, as amended. On August 25, 1978, the Board issued a Supplemental Decision and Order<sup>4</sup> reaffirming its previous Decision and Order. On January 17, 1980, the United States Court of Appeals for the Ninth Circuit issued a judgment enforcing the Board's Order.<sup>5</sup>

On August 31, 1982, the Regional Director for Region 20 issued a backpay specification and notice of hearing which specifically advised Respondent that, pursuant to Section 102.54 of the Board's Rules and Regulations, as amended, an answer to said backpay specification and notice of hearing must be filed within 15 days from the date of the backpay specification. No answer to the backpay specification was filed.

On November 22, 1982, counsel for the General Counsel filed directly with the Board a Motion For Summary Judgment. Subsequently, on December 1, 1982, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent did not file a response to the Notice To Show Cause.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the Na-

tional Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

### Ruling on the Motion for Summary Judgment

Section 102.54 of the Board's Rules and Regulations, Series 8, as amended, provides, in pertinent part, as follows:

(a) . . . The respondent shall, within 15 days from the service of the specification, if any, file an answer thereto. . . .

\* \* \* \* \*

(c) . . . If the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without notice to the respondent, find the specification to be true and enter such order as may be appropriate. . . .

The backpay specification duly issued, served, and received by Respondent states that an answer shall be filed within 15 days after service of the specification and that, if Respondent fails to file any answer to the specification within the time prescribed by this section of the Board's Rules and Regulations, the Board may, either without taking evidence in support of the allegations of the specification and without notice to Respondent, find the specification to be true and enter an appropriate order. According to the Motion for Summary Judgment, on September 29, 1982, when no answer had been filed, the Officer-in-Charge of Subregion 37 in Hawaii advised Respondent that an answer had not been received, requested that an answer be filed promptly, and advised that, in the event an answer was not filed, he would recommend that summary judgment be sought. On October 5, 1982, the backpay specification and notice of hearing was served on Respondent at a newly discovered address. A post office receipt acknowledging receipt of the backpay specification and notice of hearing was returned to the Regional Office by Unga Corporation at the Provo, Utah, address. On October 2, 1982, the supervisory compliance officer of Region 20 spoke to Willis Unga on the telephone and informed Unga that a Motion for Summary Judgment would be filed if the required written answer to the backpay specification was not timely received. No answer has been filed as a result of these further communications.

<sup>1</sup> The name of Respondent has been amended in accordance with the backpay specification and notice of hearing in this proceeding.

<sup>2</sup> 229 NLRB 567.

<sup>3</sup> Herein called Respondent.

<sup>4</sup> 237 NLRB 1306.

<sup>5</sup> Docket No. 79-7319.

As Respondent failed to file a response to the Notice To Show Cause, the allegations of the Motion for Summary Judgment stand uncontroverted. Accordingly, as Respondent has failed to comply with the provisions of Section 102.54 (a) and (c) of the Board's Rules and Regulations, pursuant to such provisions, the allegations of the specification are deemed to be admitted to be true and are so found by the Board without taking evidence in support of said allegations.

Accordingly, on the basis of the allegations of the specification which are accepted as true, the Board finds the facts set forth therein, concludes the net backpay and benefit payments due the employees affected by Respondent's unlawful conduct are as stated in the computations in the specification, and accordingly orders that payment in accord with the backpay specification be made by Respondent.

## ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Unga Painting Corporation, Laie, Hawaii, and Unga Corporation, Provo, Utah, its officers, agents, successors, and assigns, shall make whole each of the employees affected by its unlawful conduct by payment to them of the amounts set forth adjacent to their names in the appendix which is attached hereto, plus interest in the manner set forth in *Florida Steel Corporation*, 231 NLRB 651 (1977),<sup>6</sup> less tax withholdings required by Federal and state laws.

<sup>6</sup> See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

## APPENDIX

	<i>Net Backpay</i>	<i>Pension</i>	<i>Annuity</i>
John Badiali	\$18,728.80	\$1,920.00	\$1,524.00
James Miyamoto	19,667.04	2,030.40	1,570.00
Henry Murata	19,788.80	1,920.00	1,524.00
Inoke Palepale	8,712.73	831.80	601.20
Leroy Rosa	8,058.59	1,065.20	906.20
Frank Silva	20,400.80	2,040.00	1,574.00